

68. Permit Condition 34 requires Respondents to comply with former RI HW Rule 9.18 (currently RI HW Rule 8.1). Particularly, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) states that facility owners and operators must manage containers in a manner equivalent to 40 C.F.R. Part 264, Subpart I, specifically, 40 C.F.R. § 264.171. Pursuant to 40 C.F.R. § 264.171, if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition.

69. At the time of the Inspection, Respondents stored one severely dented 55-gallon container labeled as “hazardous waste, Walco Electric, waste flammable liquids, varnish, D001, paint sludge, Drum No. PRO-08380-001, waste profile 3D79584-06” in a row designated by EPA Inspectors as “Row 16” of the West Warehouse of Building 4.

70. At the time of the Inspection, Respondents stored a severely corroded drum (drum number PRO-05837-008) labeled as “nickel plating solution, environmentally hazardous substances, solid (nickel), Darlene Group, Pawtucket, Rhode Island” in a row designated by EPA Inspectors as “Row 8” in the southeast area of the Lower Warehouse of Building 11.

71. Accordingly, Respondents’ storage of hazardous waste in containers that were not in good condition constitutes violations of Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.171.

**Count 12 - Failure to Keep Hazardous Waste and Universal Waste in Closed Containers.**

*Hazardous Waste Containers*

72. Complainant incorporates by reference the allegations of paragraphs 1 to 71.

73. Pursuant to the general “Compliance” paragraph of the Permit, the “Permittee shall

operate the facility in strict compliance with the [Rhode Island Hazardous Waste Management Act of 1979 (the Act)], as amended, the RI HW Rules and Regulations for Hazardous Waste Management (the Regulations)], and all subsequent amendments, and all Permit Conditions.” Pursuant to former RI HW Rule 5.02 (currently RI HW Rule 5.2A), generators of hazardous waste may store hazardous waste on site for 90 days or less without a permit provided that they comply with the requirements of 40 C.F.R. § 262.34, except for 262.34(d), (e) and (f). Pursuant to 40 C.F.R. § 262.34(a)(1), a generator may accumulate waste in containers provided that it complies with, among other requirements, 40 C.F.R. Part 265, Subpart I, which includes 40 C.F.R. § 265.173(a). Forty C.F.R. § 265.173(a) provides that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

74. Permit Condition 34 requires compliance with former RI HW Rule 9.18 (currently RI HW Rule 8.1). Specifically, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) requires the facility owner or operator to manage containers in a manner equivalent to 40 C.F.R. Part 264, Subpart I. In particular, 40 C.F.R. § 264.173(a) provides that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

75. At the time of the Inspection , Respondents failed to keep the following hazardous waste containers closed, except when it was necessary to add or remove waste:

(a) Drum IDI-1: The lid and ring were not tightened onto the rim of Drum IDI-1 in the hazardous waste storage area adjacent to the laboratory of Building 4. Drum IDI-1 was labeled as “hazardous waste, waste flammable liquid, n.o.s., 3, UN1993, 4/2/09”;

(b) Under the PCB Fume Hood in the Laboratory, a 1-liter satellite accumulation container which contained pipettes, test tubes and small amounts of liquid waste residual, was

open and unlabeled; and

(c) A one-cubic yard tote in the cyanide storage area of the Upper Warehouse of Building 11 was open with cyanide salt content on the top of the tote exposed to the environment. This tote was labeled "hazardous waste, PRO-09545-019, profile 3560437-00, cyanide salts."

76. At the time of the Inspection, Respondents were not adding or removing waste from the containers described above in paragraph 75.

77. Accordingly, Respondents' failure to keep hazardous waste containers closed, except when necessary to add or remove waste, constitutes violations of former RI HW Rule 5.02 (currently RI HW Rule 5.2A), which incorporates 40 C.F.R. § 262.34, which references 40 C.F.R. § 265.173(a), Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. § 264.173(a).

#### *Universal Waste Mercury-Containing Lamps*

78. Complainant incorporates by reference the general "Compliance" paragraph of the Permit.

79. Former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I) incorporates 40 C.F.R. § 273.33 by reference and further requires a large quantity handler of universal waste mercury-containing lamps to manage them in a way that prevents releases to the environment. In particular, such a handler must contain universal waste mercury-containing lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. This container must be closed, structurally sound, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. Furthermore, unbroken mercury-containing lamps must be kept in closed packaging



that will minimize breakage during normal conditions.

80. Pursuant to former RI HW Rule 3.00 (currently RI HW Rule 3.0), a large quantity universal waste handler is one who accumulates 5,000 kilograms (11,000 pounds) or more total of all other universal waste (such as universal waste batteries, pesticides, thermostats, mercury-containing devices, or mercury-containing lamps), calculated collectively at any time.

81. The Facility was a large quantity handler of universal waste at all relevant times.

82. At the time of the Inspection, Respondents failed to manage universal waste mercury-containing lamps to prevent releases to the environment in the following manner:

(a) Two universal waste mercury-containing lamps resting on the cover of one of the tanks located in the Lower Pretreatment Room of Building 4 at 252 Allens Avenue were not contained in any kind of packaging;

(b) Approximately seven universal waste mercury-containing fluorescent lamps stored on a make-shift shelf located on the exterior wall of Building 1 were not contained in any kind of packaging; and

(c) Backed-up to the Loading/Unloading Area of the Upper Warehouse of Building 11 was a truck trailer in which Respondents stored universal waste mercury-containing fluorescent lamps and a few lead-acid batteries. The trailer was approximately three-quarters full, representing over 5,000 kilograms of lamps and batteries. The boxes containing such lamps had open lids, were poorly sealed, and were distorted by the weight and pressure of other overlaying boxes. There also was evidence of broken lamp glass in the trailer.

83. Respondents' failure to manage universal waste mercury-containing lamps so as to prevent releases to the environment constitutes violations of the general "Compliance" paragraph

of the Permit and former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I). See 40 C.F.R. § 273.33.

**Count 13 - Failure to Properly Label Hazardous Waste and Universal Waste Containers.**

84. Complainant incorporates by reference the allegations of paragraphs 1 to 83.

*Hazardous Waste Containers*

85. Permit Condition 34 requires compliance with former RI HW Rule 9.18 (currently RI HW Rule 8.1).

86. Pursuant to former RI HW Rule 9.18(B) (currently RI HW Rule 8.1), facility owners and operators must label the side of all hazardous waste containers containing 110 gallons or less with information required by former RI HW Rule 5.04(C) (currently RI HW Rule 5.4.C). Under Rule 5.04(C) (currently RI HW Rule 5.4.C), a generator must label containers in satellite accumulation with the words "Hazardous Waste" and other words that identify the contents of the containers. Pursuant to 40 C.F.R. § 268.50(a)(2)(i), the owner/operator of a treatment, storage or disposal facility may store hazardous waste on site in containers for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal, provided that each container is clearly marked to identify its contents.

87. Pursuant to former RI Rule 5.04(A) (currently RI HW Rule 5.4.A), the generator shall label all hazardous waste containers, excluding satellite accumulation containers, with the words "Hazardous Waste." Pursuant to former RI HW Rule 5.04(C) (currently RI HW Rule 5.4.C), the generator must include on each container in satellite accumulation, pursuant to former RI HW Rule 3.00 (currently RI HW Rule 3.0), the words "Hazardous Waste" and other words that identify the contents of the container.

88. At the time of the Inspection, Respondents failed to properly label satellite accumulation containers and other hazardous waste containers in the following manner:

(a) Under the fume hood in the Spot Test / Screening Room Respondents stored a plastic-lined, 5-gallon satellite accumulation container that was labeled "hazardous waste, satellite accumulation container, basic, R.Q. hazardous waste solid, n.o.s., 9, NA 3077" on July 20, 2009. On July 21, 2009, this container was relabeled "basic, debris, solid, gloves, pipettes, test tubes." There were no words, however, identifying the actual wastes being tested in the spot tests and disposed of into this satellite accumulation container;

(b) Under the fume hood in the Metal Digestion Area there was a 5-gallon satellite accumulation container labeled as "hazardous waste, satellite accumulation area, R.Q. hazardous waste solid, n.o.s., NA 3077." There were no words, however, identifying the actual wastes being tested in this area and disposed of into this satellite accumulation container;

(c) In the Gas Chromatography / Mass Spectrometer ("GC/MS") room there was a full 4-liter amber glass bottle serving as a satellite accumulation container for the off-line GC/MS. At the time of the Inspection, a tube was running from the discharge port of the GC/MS into the opening of the amber glass satellite accumulation container. This container was labeled "sample drain waste," "drain waste," and "waste." The words "hazardous waste" and words identifying the wastes disposed of into this satellite accumulation container were missing. The Laboratory Manager, Mr. Haroutounian, indicated that the content of this amber glass container is normally emptied into a five-gallon carboy located in a cabinet under a bench near the PCB Fume Hood of the Laboratory in Building 4. During the July 20, 2009 inspection, this carboy was full and unlabeled. On the next inspection date, July 21, 2009, this carboy was relabeled as "hazardous



waste, waste flammable liquid, n.o.s. F002, F005 (methanol, methylene chloride), UN 1993.”

While Mr. Haroutounian explained that these words reflected the chemical reagents used during the GC/MS analysis, there still were no words identifying the actual residual wastes tested on the GC/MS and disposed of into this satellite accumulation container;

(d) Associated with the inductively coupled plasma spectrometer (“ICP”) used for in-house metals analysis was a five-gallon satellite accumulation container. A tube was running from the ICP discharge port into the opening of this container. The container was labeled “hazardous waste, satellite accumulation area, R.Q. hazardous waste solid, n.o.s., NA3077, acidic, acid rinse water.” The Laboratory Manager, Mr. Haroutounian, stated that the content of this container consisted of trace amounts of nitric acid, hydrochloric acid, and waste samples. There were no words, however, identifying the actual waste samples tested on the ICP and disposed of into this satellite accumulation container;

(e) The satellite accumulation container for the Total Organic Carbon (“TOC”) Analyzer was labeled “hazardous waste, satellite accumulation area, phosphoric acid.” There were no words, however, identifying the actual waste samples tested using the TOC Analyzer and disposed of into this container;

(f) In the East Warehouse of Building 4, Respondents stored a row of totes designated as “Row 12” by EPA inspectors. Row 12 contained totes with labels identifying Northland as the generator. There were, however, no words identifying the contents of the totes;

(g) In the East Warehouse of Building 4, Respondents stored an one-cubic yard tote located in a row of totes designated as “Row 9” by EPA inspectors. This tote had a hazardous waste label indicating “Circuit Boards Express, waste corrosive liquid, acidic, inorganic (mixed

acids).” This label did not identify, however, which acids in particular were contained in this tote;

(h) In the West Warehouse of Building 4, Respondents stored a 55-gallon drum located in a row designated as “Row 8” by EPA inspectors. This drum was labeled “non-hazardous waste, The Hospital of Central Connecticut, lab solution, non-regulated, 6/5/09, Drum No. PRO-07960-006.” This drum was sampled by EPA. EPA’s analytical results indicated, however, that the waste in this drum contained ethyl benzene and p/m/o-xylenes. Additionally, Respondent shipped this drum off-site on July 27, 2009 as “waste flammable liquid, toxic (xylene, toluene), D001, F001, F002, F003, F005, R011” under manifest number 005435568 JJK; and

(i) In the Flammable/Water Reactive Storage Area of the Upper Warehouse of Building 11 at 275 Allens Avenue Respondents stored a 16-gallon container labeled “A1377-010, [illegible], dangerous when wet.” There were no words identifying the contents of the container.

89. Respondents’ failure to label hazardous waste containers with the words “Hazardous Waste” and other words that identify the contents of each container constitutes violations of Permit Condition 34 and former RI HW Rules 9.18(B), 5.04(A) and 5.04(C) (currently RI HW Rules 8.1, 5.4.A, and 5.4.C, respectively) and 40 C.F.R. § 268.50(a)(2)(i).

#### *Universal Waste Mercury-Containing Lamps*

90. Former RI HW Rule 13.06(L)(3) incorporates and revises 40 C.F.R. § 273.34(e) by requiring large quantity universal waste handlers to label or clearly mark universal waste mercury-containing lamps, or the container in which such lamps are contained, with one of the following phrases: “Universal Waste – Mercury-Containing Lamps(s),” or “Waste Mercury-Containing Lamp(s),” or “Used Mercury-Containing Lamp(s).” (Currently, RI HW Rule 13.5.N



incorporates 40 C.F.R. § 273.34 in its entirety without any change specifically related to universal waste mercury-containing lamps.)

91. Respondents were universal waste handlers at all times relevant to this Complaint.

92. At the time of the Inspection, Respondents failed to label or mark universal waste mercury-containing lamps in the following manner:

(a) Two universal waste mercury-containing lamps resting on the cover of one of the tanks located in the Lower Pretreatment Room were not labeled; and

(b) Approximately seven universal waste mercury-containing fluorescent lamps stored on a make-shift shelf located on the exterior wall of Building 1 were not labeled.

93. Accordingly, Respondents' failure to label or mark universal waste mercury-containing lamps described in paragraph 92 with the phrase "Universal Waste – Mercury-Containing Lamps(s)," or "Waste Mercury-Containing Lamp(s)," or "Used Mercury-Containing Lamp(s)," constitutes violations of former RI HW Rule 13.06(L)(3) (currently RI HW Rule 13.5.N). See 40 C.F.R. § 273.34(e).

**Count 14 - Failure to Date Hazardous Waste and Universal Waste Containers.**

94. Complainant incorporates by reference the allegations of paragraphs 1 to 93.

95. Pursuant to former RI HW Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5), the generator must label all hazardous waste containers with the containerization date (accumulation start date). The accumulation start date is the date that hazardous waste first begins accumulating in a container or tank, exclusive of satellite accumulation. Pursuant to 40 C.F.R. § 268.50(a)(2)(i), the owner or operator of a treatment, storage or disposal facility may store hazardous waste on site in containers for the purpose of accumulation as necessary to facilitate

proper recovery, treatment, or disposal, provided that each container is clearly marked with the date each period of accumulation begins.

96. At the time of the Inspection, Respondents failed to mark roll-off number 440, located in Roll-off Storage Area 252-A, with the accumulation start date. This roll-off was labeled as “hazardous waste, debris for micro (BDS1/BDS2), Northland as generator, profile CJ2681-00, D002, D004-D011, D018, F006-F012, F019 and R011.”

97. Accordingly, Respondents’ failure to mark roll-off number 440 with the accumulation start date constitutes a violation of former Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5) and 40 C.F.R. § 268.50(a)(2)(i).

#### *Universal Waste Mercury-Containing Lamps*

98. Former RI HW Rule 13.06(M) incorporates 40 C.F.R. § 273.35 by reference and further specifies that mercury-containing lamps are subject to the requirements of 40 C.F.R. § 273.35(c). (Currently, RI HW Rule 13.5 incorporates 40 C.F.R. Part 273 in its entirety.)

99. Pursuant to 40 C.F.R. § 273.35(c), a large quantity handler of universal waste must be able to “demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.” The handler can do so using one of the following methods: (1) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; (2) marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received; or (3) maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received; or (4) maintaining an inventory system on-site that identifies the earliest date that any universal

waste in a group of universal waste items or a group of containers of universal waste became a waste or was received; (5) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (6) any other method which clearly demonstrates the length of time.

100. At the time of the Inspection, two universal waste mercury-containing lamps, as described above in paragraph 92(a), and seven mercury-containing lamps, as described above in Paragraph 92(b), were not labeled, or placed a container that was labeled, with the earliest date that such lamps became wastes or were received.

101. There was no evidence that Respondents employed any other method which clearly demonstrated the length of time that such lamps have been accumulating from the date such lamps became wastes or were received.

102. Accordingly, Respondents' failure to clearly demonstrate the length of time that universal waste mercury-containing lamps had been accumulating from the date such lamps became wastes or were received constitutes a violation of former RI HW Rule 13.06(M) (currently RI HW Rule 13.5), which incorporates 40 C.F.R. § 273.35(c).

**Count 15 - Failure to Minimize the Possibility of a Fire, Explosion or Unplanned Hazardous Waste Release.**

103. Complainant incorporates by reference the allegations of paragraphs 1 to 102.

104. Permit Condition 28 requires Respondents to comply with former RI HW Rule 9.08 (currently RI HW Rule 8.1) as described in Section 9.00 of the Permit Application.

105. Pursuant to former RI HW Rule 9.08 (currently RI HW Rule 8.1), the facility owner or operator must comply with preparedness and prevention requirements equivalent to those in



40 C.F.R. Part 264, Subpart C. Specifically, 40 C.F.R. § 264.31 requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

106. Permit Condition 5 requires Respondents to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Respondents to achieve compliance with the conditions of the permit.

Proper operation and maintenance includes adequate laboratory and process controls.

107. Permit Condition 4 requires that, in the event of noncompliance with the Permit, Respondents shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health and the environment.

108. At the time of the Inspection, Respondents failed to maintain and operate the Facility in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste, and failed to properly operate and maintain all facilities and systems of treatment and control in the following manner:

(a) Tank M-3: Tank M-3 is located in the Photochemical Treatment Room (also known as the Photo Developer Treatment Area) of Building 4. The General Manager, Mr. Kevin Fitzgerald, indicated that Respondents used Tank M-3, which was labeled "M-3 Hazardous," to treat photographic waste. The access port at the top of Tank M-3 was open at a time when the tank contained 5,966 gallons of photographic waste (approximately 92 percent of its 6,500 gallons maximum capacity). The visible surface of the waste in Tank M-3 was about one foot

from the open access port. No associated high level alarm had been activated at the time. A strong odor resembling ammonia was emanating from this room;

(b) Drums PRO-09242-019 and PRO-09242-020: Two black metal drums were leaking onto their respective wooden pallets in the East Warehouse of Building 4 at 252 Allens Avenue. During the Inspection, EPA sampled the liquid waste leaking from each drum. The analytical results indicated pH values of approximately 1.0 S.U. for both drums. Both drums were labeled "Order No. 990034, Colt Mfg. West Hartford, CT, sulfuric acid." Drum PRO-09242-019 was standing on a stained wooden pallet with leaks flowing through its sidewall pinholes and onto the warehouse floor. Drum PRO-09242-019 was co-located with another leaking drum already placed in a yellow over-pack drum. The pooled leak from this other drum could be seen through the yellow over-pack sidewall. Drum PRO-09242-020 was standing, with leaks flowing through its sidewall pinholes, on a stained wooden pallet situated over a secondary containment pallet. Drum PRO-09242-20 was co-located with a third bulging drum, labeled "PRO-08957-003 50% nitric acid," on the same wooden pallet;

(c) Boxes of Waste Solids Containing Flammable Liquids: Standing in a row designated by EPA Inspectors as "Row 18" in the West Warehouse of Building 4 were two containers. One was a 1-cubic yard cardboard box standing on a secondary containment pallet with the label "waste solids containing flammable liquids (D001)." The bottom of the box was wet and appeared as though it was about to leak its contents. The box was not marked with Respondents' "PRO" container number. Mr. Fitzgerald indicated that all of the containers in Row 18 were wastes generated by Northland from the consolidation of the flammable solids drums into cubic-yard totes, which would ultimately be shipped off-site for incineration. The other container in

Row 18, also stored on a secondary containment pallet, was a similar 1-cubic yard box with signs of leakage at the bottom of the box. Additionally, a strong odor was emanating from Row 18 in the proximity of these two containers;

(d) East End Loading Dock: The East End Loading Dock of Building 4 is used for off-loading tankers of hazardous and non-hazardous waste into the tank farms at 252 Allens Avenue as well as for off-loading waste containers. Liquid was accumulating in the immediate containment area of the dock. Dirt had built up in the containment area so that inspection of the surface conditions by Facility personnel could potentially be inhibited. Moreover, the area where the main containment pad and the sidewall berm intersected near the dock was deteriorating at a level significant enough to expose the underlying earth;

(e) Flammables Cut-Off Room: Rain water was leaking from the ceiling at three distinct locations into the Flammables Cut-Off Room of Building 4. The rain water also was falling and pooling on top of drums in the room. Rain water can cause corrosion of the drums;

(f) Water Reactive Storage Area: An overhead water sprinkler system was installed directly over the Water Reactive Storage Area in the Upper Warehouse of Building 11. In the event of an area fire, the sprinkler system on the overhanging ceiling would rain down onto the water reactive wastes. Mr. Fitzgerald indicated that the sprinklers were functional at the time of the Inspection. Moreover, although the water reactive wastes were stored under a roof, two sides of this storage area were exposed to the elements: the north side was partially exposed and the south side was completely exposed;

(g) Southeast Area of the Lower Warehouse: Two drums were leaking onto the floor just outside the southeast area of the Lower Warehouse in Building 11. Both leaking drums were



labeled as "chlorinated solvent and carbon (F002, D040), from Tanury Plating/Tanury Industries." One of these drums was marked with container number PRO-08382-007. The drums were situated on top of a containment pallet and hanging over the edge of a secondary containment pellet in such a way that the leaks were released to and flowing across the floor. When the leaks were pointed out to Facility personnel, the containers were moved into the containment pallet;

(h) Upper Warehouse, General Storage Area: The ceiling of the Upper Warehouse in the General Storage of Building 11 was leaking rain water onto an area storing toxic and corrosive hazardous wastes. Mr. Fitzgerald described the area as primarily being used for temporary storage of unclassified alkaline and cyanide wastes. All of the containers were stored in rows placed on top of wooden pallets. A 1-cubic yard tote, labeled "hazardous waste, PRO-09545-019, profile 3560437-00, cyanide salts," was open with its cyanide salt content found on the top of the tote;

(i) Roll-off Storage Area 252-A: The secondary containment pad and berm for Roll-off Storage Area 252-A were cracked and showing signs of substantial deterioration. The corner of this secondary containment pad and berm (near roll-off number 368) had accumulated a significant amount of liquid with an oil-sheen on the surface. EPA sampled this liquid during the Inspection. Analytical results indicated a pH value of approximately 10 to 11 S.U. Further, the valve used to remove liquid contents from this secondary containment pad and berm was partially open and leaking the liquid contents into the immediate parking lot and soil. Finally, the berm was cracked allowing water to leak from underneath the berm at several locations; and

(j) Roll-off Number 440: Roll-off number 440, labeled as “hazardous waste, debris for micro (BDS1/BDS2), Northland as generator, profile CJ2681-00, D002, D004-D011, D018, F006-F012, F019 and R011,” was leaking a liquid at its back end, near the broken berm of the secondary containment structure. The leaking liquid was seeping into the ground near the severely broken containment berm. EPA sampled the liquid during the Inspection. Analytical results indicated a pH value of approximately 14.0 S.U. indicating that the liquid was corrosive. A strong odor was also emanating from the vicinity of this roll-off.

109. Accordingly, Respondents’ failure to properly maintain and operate the Facility and all systems of treatment and control – resulting in actively leaking drums; compromised cubic yard boxes and roll-offs that held corrosive, flammable, toxic and chlorinated wastes; failed secondary containment structures; improperly utilized secondary containment structures and flow control devices (i.e. open valves, open tanks, and leaking drums overhanging secondary containments); failed protective mechanisms (i.e. leaking roofs pooling water onto hazardous waste drums and totes); and improperly designed storage areas (i.e., water sprinklers situated over water reactive wastes) – constitutes violations of Permit Conditions 4, 5, and 28 and former RI HW Rule 9.08 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. § 264.31.

**Count 16 - Failure to Adequately Conduct and Document Inspections.**

110. Complainant incorporates by reference the allegations in paragraphs 1 to 109.

111. Permit Condition 26 requires Respondents to comply with former RI HW Rule 9.05 (currently RI HW Rule 8.1), as described by Section 7.00 of the Permit Application.

112. Former RI HW Rule 9.05 requires the owner or operator of the facility to maintain an inspection program equivalent to 40 C.F.R. § 264.15. (Currently RI HW Rule 8.1 incorporates 40 C.F.R. § 264.15 by reference.)

113. Pursuant to 40 C.F.R. § 264.15, the owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, and/or may lead to, a release of hazardous waste constituents to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

114. Section 7.50 of the Permit provides the inspection schedule, as specified in Table 7.1.

115. Section 7.40 of the Permit requires Respondents to routinely inspect equipment or units not in use and to document associated findings.

116. Furthermore, Section 7.40 of the Permit requires the use of periodic inspection forms to document inspections. These forms include the date and time of the inspection, the inspector's name, inspection observations, and the date and nature of repairs. See 40 C.F.R. § 264.15(d).

117. Section 7.00 of the Permit requires that conditions noted during an inspection be remedied in a timely manner to minimize harm, and that corrections are to be made immediately where damage has already occurred (leaks, spill, etc.) or where imminent hazard is noted. See 40 C.F.R. § 264.15(c).

118. EPA inspectors reviewed the monthly, weekly, and daily in-house routine inspection reports and weekly sprinkler system inspection reports that Respondents prepared for April, May,



and June 2007; August, September, and October 2008; and June, July, and August 2009, pursuant to Section 7.00 and Section 7.50 of the Permit.

119. Respondents failed to conduct and adequately document inspections in the following manner:

(a) The “comment” fields on Respondents’ monthly, weekly, and daily inspection reports (although occasionally filled out) were generally blank or sparsely filled in. In many instances, the inspection reports simply documented compliant conditions with phrases such as: “OK, NA, None, or No” to indicate that no problems existed. In these instances, there were no notations indicating whether Respondents did or did not observe malfunctions, deterioration, operator errors, or discharges which may be causing, or may lead to, release of hazardous waste constituents to the environment or threats to human health;

(b) Respondents’ routine inspection reports immediately preceding EPA’s July 2009 inspection did not record several of the concerns that EPA inspectors observed during the July 2009 inspection, including: cracked secondary containment walls, pitted tanks, holes in tanks, leaking roll-offs, compromised roll-off secondary containment pad, missing or broken or disengaged tank level indicators, bulging and leaking 55-gallon drums, storage of incompatible wastes, open totes, leaking roofs, and broken un-contained and unlabeled universal waste lamps. For example, the April 2009 monthly report, dated April 30, 2009, indicated “roll-off Area A (in NW corner) = OK.” EPA’s observation of this same area during the July 2009 inspection indicated that the damage was long-standing;

(c) Respondents’ inspection logs repeatedly contained phrases such as “need to fix gate 275,” “gate 275,” “awaiting further repairs 275 gate,” or other similar language indicating that a

problem existed with the gate at 275 Allens Avenue for the months of January 2009, June 2009, July 2009, and August 2009 – spanning a period of eight months. There was no remedial action recorded; and

(d) Among all of the inspection records that EPA inspectors reviewed, there was no record corresponding to the inspection of the Hazardous Waste Storage Area located in Building 4 near the Laboratory.

120. Accordingly, Respondents' failure to adequately conduct and document routine inspections and to undertake remedial measures in a timely manner constitutes violations of Permit Condition 26 and former RI HW Rule 9.05 (currently RI HW Rule 8.1). See 40 C.F.R. § 264.15.

## **VI. PROPOSED PENALTIES**

121. In determining the amount of any penalty to be assessed, pursuant to Section 3008(a) of RCRA, EPA will take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged violations in this Complaint, Region 1 will take into account the particular facts and circumstances of ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. By this Complaint, Region 1 seeks to assess Respondents civil penalties of up to \$37,500 per day per violation of RCRA for:

a. Six violations by Respondents for failing to make hazardous waste determinations on seven waste streams: These violations are significant because without making hazardous

waste determinations, a facility may not implement the appropriate hazardous waste management procedures required by RCRA, and hence, may increase the risk of exposure to human and/or environmental receptors.

b. Twenty-one violations by Respondents for failing to comply with land disposal restriction requirements associated with twenty-one manifests: These violations are significant because the failure to properly complete and maintain LDR notifications can lead to improper treatment of hazardous waste before land disposal.

c. One violation by Respondents for failing to determine the average volatile organic compound concentration at the point of waste origination for each hazardous waste placed in tank S-12: This violation is significant because tanks containing hazardous wastes with high VOC concentrations have the potential to pollute when applicable RCRA air emission controls are not followed. Respondents' failure to make the requisite determination circumvented such air emission controls and increased the potential for release of VOCs into the environment.

d. Five violations by Respondents for storing hazardous wastes in tanks that are in poor condition and for failing to support and protect ancillary equipment associated with five tanks (M-1, M-3, S-12, S-51, and FS-2): These violations are significant because maintaining the integrity of hazardous waste storage tank systems is paramount to preventing tank failure, which could cause large releases of hazardous wastes into the environment.

e. One violation by Respondents for storing incompatible hazardous wastes in tank M-3: This violation is significant because the commingling of acidic and alkaline wastes in tank M-3 could have generated heat and resulted in a potential explosion, fire and/or the



release of toxic gases and hazardous wastes.

f. One violation by Respondents for failing to use appropriate controls and practices to prevent spills and overflows from tanks S-21A, S-21B, and S-12: This violation is significant because tank overfill or failure could release large volumes of hazardous wastes into the environment.

g. One violation by Respondents for failing to remove accumulated water from secondary containment systems within 24 hours or in as timely a manner as possible: This violation is significant because prolonged exposure to standing precipitation can cause corrosion and deterioration of containment structures and ancillary equipment. Standing water also can interfere with Respondents' ability to visually inspect the integrity of containment structures and ancillary equipment, therefore, increasing the potential for spills, leaks and system failures.

h. Four violations by Respondents for storing hazardous wastes in unpermitted areas in four areas of the Facility: These violations are significant because precise storage of hazardous wastes in their specific permitted areas is necessary to ensure, among other things, adequate aisle space, the storage of compatible wastes, adequate secondary containment capacity, the presence of appropriate emergency response equipment, ventilation and ambient temperature necessary for the safe storage of hazardous wastes.

i. One violation by Respondents for failing to maintain adequate aisle space: This violation is significant because inadequate aisle space impedes the detection and correction of conditions that may lead to a release, fire and/or explosion, and hampers the timely and effective access of emergency responders and equipment to compromised containers.

j. Four violations by Respondents for failing to separate hazardous waste containers from nearby incompatible wastes or other materials by means of a dike, berm, wall, or other device in four major areas of the Facility: These violations are significant because the collocation of incompatible wastes increases the potential for, among other things, exothermic reactions, heat generation, formation of flammable and/or toxic gases, increased pressurization within containers, fire, explosion, and/or the release of corrosive or toxic compounds.

k. One violation by Respondents for failing to store hazardous wastes in containers that are in good condition: This violation is significant because Respondents' storage of hazardous wastes in severely dented and severely corroded containers containing flammable and corrosive wastes poses a considerable threat of harm to the health of Facility personnel working amongst such containers in the event of container failure.

l. One violation by Respondents for failing to keep hazardous waste and universal waste containers closed, except when necessary to add or remove waste: This violation is significant because the failure keep such containers closed increases the potential for direct contact of personnel with hazardous wastes, emissions of volatile wastes, reaction, ignition, spills, and/or commingling of incompatible wastes.

m. One violation by Respondents for failing to properly label hazardous waste containers and universal waste lamps: This violation is significant because Respondents' failure to properly label hazardous waste containers and universal waste lamps increases the potential for mismanagement and hampers emergency responders' ability to identify the contents of such containers.

n. One violation by Respondents for failing to properly date hazardous waste and universal waste containers: This violation is significant because the failure to mark hazardous waste and universal waste containers with the accumulation start date increases the potential that such wastes would be stored for more than the 90 days allowed under the Permit. Such long-term storage increases the likelihood of mismanagement and contamination due to leaks and spills.

o. Ten violations by Respondents for failing to maintain and operate a facility in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste and to properly operate and maintain all facilities and systems of treatment and control in eight areas of the Facility: These violations are significant because the actively leaking drums could have migrated to environmental receptors and caused harm to human health and the environment. Further, failed secondary containment structures, improperly utilized flow control devices, failed protective mechanisms, and improperly designed storage areas at the Facility increased the potential for a release of hazardous wastes into the environment.

p. One violation by Respondents for failing to adequately conduct and document routine inspections: This violation is significant because weekly inspections are necessary to ensure that hazardous waste management problems are detected early and remedied promptly. Moreover, poorly documented inspection logs prevent Facility personnel from being able to clearly demonstrate whether inspections revealed problems, and how and when such problems were remedied to prevent harm to human health and the environment.

122. Complainant will calculate a proposed penalty based, in part, on its current knowledge of Respondents' financial condition. Respondents shall pay the civil penalty with



a cashier's or certified check, payable to the Treasurer, United States of America.

Respondents should note on this check the docket number of this Complaint (EPA Docket No. RCRA-01-2012-0028). The check shall be forwarded to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100, Mail Code ORA18-1  
Boston, Massachusetts 02109

and  
Andrea Simpson, Esq.  
U.S. Environmental Protection Agency, Region 1  
Mail Code OES04-2  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109

## **VII. COMPLIANCE ORDER**

123. Based on the foregoing findings, Respondents are hereby **ORDERED** to achieve and maintain compliance with all applicable requirements of the Permit, the RI HW Rules and RCRA. Specifically, upon receipt of this Compliance Order, Respondents shall comply with the following requirements:

124. Immediately upon receipt of this Complaint, Respondents shall conduct hazardous waste determinations in accordance with the requirements of Section 5.00 (Waste

Analysis Plan) of the Permit Application and former RI HW Rule 5.08 (currently RI HW Rule 5.8). See also 40 C.F.R. § 262.11.

125. Immediately upon receipt of this Complaint, Respondents shall conduct hazardous waste determinations in accordance with the requirements of Permit Condition 23 and former RI HW Rule 9.02 (currently RI HW Rule 8.1). See also 40 C.F.R. § 264.13.

126. Immediately upon receipt of this Complaint and in accordance with the land disposal restriction requirements of 40 C.F.R. § 268.7(a) and (b), Respondents shall determine if a hazardous waste must be treated before it can be land disposed. If the waste does not meet these treatment standards, Respondent shall send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in its file. In this one-time notice Respondent shall include, among other information, EPA hazardous waste numbers, the constituents of concern for F001-F005 and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents.

127. Immediately upon receipt of this Complaint and in accordance with 40 C.F.R. § 264.1083(a)(1), Respondents shall determine the average Volatile Organic concentration of hazardous waste at the point of waste origination for each hazardous waste that Respondent places in tanks to ensure that air emission controls are implemented at the Facility when required by 40 C.F.R. § 264.1084.

128. Within 60 days of receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. Part 264, Subpart J, Respondents shall store hazardous wastes in tanks that are in good condition and support and protect ancillary equipment, in accordance with the

requirements of 40 C.F.R. §§ 264.192(a), (e), and (g) and 40 C.F.R. § 264.198(a)(2).

129. Immediately upon receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.194(a), Respondents shall ensure that no hazardous wastes or treatment reagents are placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode or otherwise fail.

130. Within 30 days of receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.194(b), Respondents shall implement appropriate controls and practices to prevent spills and overflows from tanks.

131. Immediately upon receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.193(c)(4), Respondents shall ensure that liquids accumulated in secondary containment systems at the Facility are removed from such systems within 24 hours or in as timely a manner as possible.

132. Immediately upon receipt of this Complaint and in accordance with Sections 3.00, 3.22, 3.43 and Table 3.2 of the Permit Application, Respondents shall store hazardous waste containers only in permitted areas of the Facility.

133. Immediately upon receipt of this Complaint and in accordance with Permit Condition 28 and former RI HW Rule 9.08 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.35, Respondents shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination



equipment to any area of the Facility in an emergency. Specifically, Respondent shall maintain, at minimum, the aisle space amounts specified in Section 4.30 of the Permit Application for the particular types of hazardous waste containers.

134. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.77(c), Respondents shall segregate all incompatible wastes and materials and implement management standards to ensure that all incompatible wastes and materials are kept separated from each other by means of a dike, berm, wall, or other device.

135. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.173(c), and former RI HW Rule 5.02 (currently RI HW Rule 5.2.A), which incorporates 40 C.F.R. § 262.34(a)(1) and which in turn, references 40 C.F.R. § 264.173(c), Respondents shall ensure that all hazardous waste containers are closed during storage, except when it is necessary to add or remove waste.

136. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I), Respondents shall store universal waste mercury-containing lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. This container must be closed, structurally sound, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. In addition, Respondent shall keep unbroken mercury-containing lamps in closed packaging that will minimize breakage during normal conditions. See also 40 C.F.R. § 273.33.

137. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34, former RI HW Rules 5.04(A), 5.04(C), and 9.18(B) (currently RI HW Rules 5.4.A, 5.4.C, and 8.1, respectively) and 40 C.F.R. § 268.50(a)(2)(i), Respondents shall clearly label or mark all containers holding hazardous wastes with the words “Hazardous Waste” and other words that identify the contents of the containers.

138. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(L)(3) (currently RI HW Rule 13.5.N), Respondents shall clearly label all universal waste mercury-containing lamps or containers in which such lamps are stored with one of the following phrases: “Universal Waste—Mercury-Containing Lamp(s),” “Waste Mercury-Containing Lamps(s),” or “Mercury-Containing Lamp(s).” See also 40 C.F.R. § 273.34(e).

139. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5) and 40 C.F.R. § 268.50(a)(2)(i), Respondents shall label all hazardous waste containers, including roll-offs, with the accumulation start date.

140. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(M) (currently RI HW Rule 13.5) and 40 C.F.R. § 273.35(c), Respondents shall label universal waste mercury-containing lamps with the earliest date that such lamps became wastes or were received or Respondents shall otherwise maintain such lamps in a manner that clearly demonstrates the length of time such lamps have been accumulating since they became wastes or were received.

141. Within 30 days of receipt of this Complaint and in accordance with Permit

Conditions 4, 5 and 28, and former RI HW Rule 9.08 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.31, Respondents shall design, maintain, and operate the Facility and all systems of treatment and control in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. Specifically, Respondents shall correct the conditions listed in paragraphs 108(a) through (g) of this Complaint.

142. Immediately upon receipt of this Complaint and in accordance with Permit Conditions 26, Section 7.00 of the Permit Application, and former RI HW Rule 9.05 (currently RI HW Rule 8.1), Respondents shall adequately conduct routine inspections, document, and ensure adequate documentation of any observed malfunctions and deterioration, operator errors, and discharges which may be causing and/or may lead to a release of hazardous waste constituents to the environment or a threat to human health as well as the nature of any repairs performed.

143. Immediately upon receipt of this Complaint and in accordance with Permit Condition 26, Section 7.30 of the Permit Application and former RI HW Rule 9.05 (currently RI HW Rule 8.1), Respondents shall remedy all conditions noted during an inspection in a timely manner to minimize harm. Where damage has already occurred (leaks, spills, etc.) or where imminent hazard is noted, Respondents shall take corrective actions immediately.

144. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.171, Respondents shall store hazardous waste in containers that are



in good condition.

145. Within sixty-five (65) days of receipt of this Complaint, Respondents shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in paragraphs 124 through 144, above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

146. Respondents shall submit the above required information and notices to:

Andrea Simpson, Esq.  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, Massachusetts 02109

147. If Respondents fail to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$37,500 for each day of continued noncompliance.

#### **VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

148. As provided by Section 3008(b) of RCRA, Respondents have the right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. **A request for a hearing on the violations alleged in this Complaint must be incorporated in a written Answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint. In the Answer,**

Respondents may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondents intends to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondents to admit, deny or explain any material fact contained in the Complaint constitutes an admission of that allegation.

149. Respondents' Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, Massachusetts 02109

150. Respondents should also send a copy of the Answer, as well as a copy of all other documents which it files in this action, to Andrea Simpson, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

Andrea Simpson, Esq.  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, Massachusetts 02109

#### **IX. DEFAULT ORDER**

151. If Respondents fail to file a timely answer to the Complaint, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default

by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

#### **X. SETTLEMENT CONFERENCE**

152. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide additional information that may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA Region 1. The issuance of such a Consent Agreement shall constitute a waiver of Respondents' right to a hearing on any issues of law, fact, or discretion included in the Agreement.

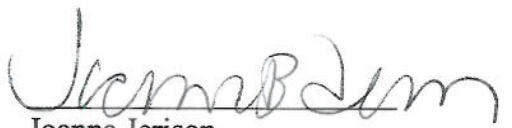
153. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Andrea Simpson, Senior Enforcement Counsel, at (617) 918-1738.



**XI. EFFECTIVE DATE**

154. This Complaint shall become effective immediately upon receipt by

Respondents.

  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 3/14/12